

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

OP.No. 5419 of 2000(S)

OA.229/1997 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
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PETITIONERS:

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1. N.P. MADHUSOODANAN, S/o LATE GOPALA PISHARADY,
AGED 51 YEARS, INCOME TAX OFFICER GROUP B (TDS)
DIVISION III, KOCHI RESIDING AT D 83, INCOME TAX
QUARTERS, PANAMPILLY NAGAR
 2. SRI N.G. MOHANDAS, INCOME TAX OFFICER GROUP B
(AD HOC) SPECIAL WARD, KOTTAYAM
 3. A.V. VENU, INSPECTOR OF INCOME TAX, OFFICE OF
THE JOINT COMMISSIONER OF INCOME TAX
(ASSESSMENT) SPECIAL RANGE I, C.R. BUILDING
I.S. PRESSROAD, COCHIN 682018

BY ADV. SRI.M.R.RAJENDRAN NAIR
SRI.R.SREERAJ

RESPONDENTS:

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1. UNION OF INDIA REPRESENTED BY THE SECRETARY
TO GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
NEW DELHI
 2. THE CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES,
NEW DELHI
 3. CHIEF COMMISSIONER OF INCOME TAX, COCHIN
 4. K. SADANANDAN, INCOME TAX OFFICER,
SPECIAL WARD, AAYAKAR BHAVAN, KANNUR 6
 5. THE SECRETARY, CENTRAL BOARD OF DIRECT TAXES,
NEW BLOCK, NEW DELHI
 6. SRI T.G. VIJAYARAGHAVAN, TAX RECOVERY OFFICER,
WEST FORT, TRICHUR 4
 7. SRI P. PARAMESWARAN, INCOME TAX OFFICER, THODUPUZHA
 8. SRI C.R. PILLAI, TAX RECOVERY OFFICER,
USHA COMPLEX, VADAYATTUKOTTA, QUILON

9. SRI K.G.P. MENON, INCOME TAX OFFICER, ALUVA
10. SRI K.R. SOMASUNDARAM, INCOME TAX OFFICER, PALGHAT
11. SRI P.K. PRABHAKARAN, INCOMETAX OFFICER,
WARD II, DIVISION III, ERNAKULAM

BY ADV. SRI.M.V.RAMACHANDRAN THAMPI,ADDL.CGSC
SRI.S.M.PRASANTH
SRI.P.BALAKRISHNAN (E)
SRI.P.PARAMESWARAN NAIR, CGC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O. P. No 5419 of 2000

Dated: 18th June 2007

JUDGMENT

Radhakrishnan, J.

This writ petition is filed against the order in O.A. Nos. 229/97, 392/98 and 397/98 of the Central Administrative Tribunal, Ernakulam Bench. Three issues arose before the Tribunal for consideration of which issue No. 2, that is, the failure of the DPC in not recommending general candidates thereby denying promotion to the petitioners for the post of Income Tax Officer during the year 1995, is the issue that arises for our consideration.

2. Learned counsel appearing for the petitioners submitted that one vacancy had occurred on account of the death of an ITO on 30.09.1995 and a retirement vacancy arose on 31.05.1996 and those two vacancies ought to have gone to general candidates. The DPC which met in May 1996 had enlisted the candidates for four general and one scheduled caste vacancies leaving the scheduled tribe post vacant. Tribunal did not find any infirmity in the select list prepared in May 1996. We are informed by the counsel for the

petitioners that the petitioners were subsequently promoted in the year 2002 to the post of Income Tax Officer. Counsel for the petitioners however maintained the stand that the petitioners should get notional promotion to the post of ITOs from September 1995 onwards. Petitioners have already retired from service and it may not be legal to direct reconsideration of the issue by the Tribunal especially when several officers were subsequently promoted on the recommendation of the DPC and they are not parties before us. Further no materials are available before us to hold that there were sufficient number of vacancies available for promoting the petitioners when the DPC met in September 1995. This being the factual position we find no reason to unsettle the decision taken by the DPC at this distance of time which was affirmed by the Tribunal, especially when the petitioners are no more in service now. The writ petition lacks merits and is accordingly dismissed.

SD/-
K.S. RADHAKRISHNAN
Judge

SD/-
ANTONY DOMINIC
Judge

18/06/2007

Petitioner's exhibits:

Ext.P1 - True copy of the Ministry of Finance, Department of Revenue, Incometax Officer Group B post Recruitment Rules, 1994

Ext.P2 - True copy of the order F No 11/Estt/1/CC/CON/96 dated 15.5.1996 issued by the third respondent

Ext.P3 - True copy of the order F No CIT/DE/Estt/95-96 dated 8.2.1996 issued by the third respondent.

Ext.P4 - True copy of the representation dated 24.6.1996 submitted by the first petitioner to the third respondent.

Ext.P5 - True copy of the order F No 23/Estt/25/CC/96 dated 28.1.1997 issued by the Assistant Commissioner of Incometax (H) for third respondent.

Ext.P6 - True copy of; the reply statement dated 20.2.1997 submitted by the official respondents in OA 229/97 in the Hon'ble Central Administrative Tribunal, Ernakulam Bench

Ext.P7 - True copy of the rejoinder filed by the first petitioner to Ext P6 reply statement - except the Annexures thereto, dated 26.2.1997 in the Honourable Central Administrative Tribunal, Ernakulam Bench

Ext.P8 - True copy of the reply statement dated 1.6.1997 filed by the 4th respondent on the file of the Honourable Central Administrative Tribunal

Ext.P9 - True copy of the rejoinder dated 25.6.1997 to Ext P8 reply statement filed by the first petitioner on the file of the Hon'ble Central Administrative Tribunal

Ext.P10 - True copy of additional reply statement (except Annexures thereto) dated 22.3.1999 submitted by the 4th respondent in OA 229/97 of the central Administrative Tribunal, Ernakulam Bench

Ext.P11 - True copy of the OA 397/98 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench

Ext.P12 - True copy of the OA 392/98 of the Honourable Central Administrative Tribunal, Ernakulam Bench

Ext.P13 - True copy of the final order dated 15.12.1999 in OA 229/97 and connected cases on the file of the Hon'ble central Administrative Tribunal, Ernakulam Bench

Respondent's exhibits:

Ext.R3(a) - True copy of office memorandum No 22011/9/89 Estt dated 17.10.1994

[true copy]